



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/151850

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on October 10, 2013, at Waukesha, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Karen Pearson

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an institutionalized resident of Waukesha County residing at [REDACTED] nursing facility.
2. Petitioner has gross monthly income from a pension of \$1,445. This includes a health insurance premium payment of \$235. He has gross monthly Social Security income of \$1,667.

3. The Petitioner's wife PB has gross monthly income from a pension of \$446.72. She has gross monthly Social Security income of \$1,162. Her total gross monthly income is \$1,608.72.
4. PB's monthly expenses are \$3,123.90 as detailed below:

Mortgage	\$940.06
Automobile loan	\$269.82
WE	\$ 71.00
Phone/Cable	\$176.56
US Cellular	\$ 77.79
Medical	\$ 60.00
Health Insurance	\$109.00
Health Insurance	\$235.00
Home insurance	\$ 30.58
Property Tax	\$216.48
Groceries/food	\$200.00
Gas	\$ 50.00
Gas credit cards	\$ 35.55 (balance of \$1,400)
Credit Cards	\$402.06 (balance of \$15,832.88)
Miscellaneous household	\$250.00
5. On August 27, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he is approved for nursing home long-term care Medicaid benefits with a monthly patient liability of \$2,090.72 effective July 1, 2013. Spousal allocation of \$967.28 was allowed (maximum allocation of \$2,585 – community spouse income of \$1608.72)
6. On September 4, 2013, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §1396d-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county is \$2,585 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

- (c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level

provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Based on this criteria, I have reviewed the expenses noted at Finding # 4 and have concerns and adjustments to make:

- PB notes \$77.79 as a monthly cell phone expense. She also has a landline included with her TV service package. This office has routinely concluded that one phone is a necessary expense. Thus, I will allow the landline as part of the TV package but disallow the monthly cell phone expense.
- With regard to the credit cards, the Petitioner testified that she has \$15,832.88 outstanding on seven credit cards and \$1,400 outstanding on two gas credit cards. The charges on the cards include medical expenses and other related expenses from when the Petitioner got sick while on vacation in Florida. Petitioner was unable to be returned home to Wisconsin for an extended period and PB incurred extraordinary expenses as a result of not being able to return home. Petitioner's son has determined that the outstanding debt can be repaid in 5 years with monthly payments of \$402.06 on the seven cards and \$35.55 on the gas cards.

Subtracting \$77.79 from monthly expenses leaves a total of \$3,046.11 in allowable monthly expenses. Therefore, I conclude that PB's total spousal allocation from the Petitioner's income should be increased to a total of \$1,437.39 (\$3,046.11 in allowable monthly expenses - \$1,608.72 PB's monthly income).

CONCLUSIONS OF LAW

The community spouse PB has demonstrated that an increase in her spousal allocation of \$967.28 is warranted for a total spousal allocation of \$1,437.39.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to increase the community spouse's allocation to \$1,437.39 effective July 1, 2013, and to make the corresponding reduction in Petitioner's cost share. This action shall be taken within ten (10) days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

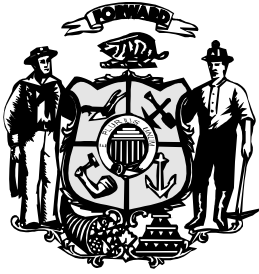
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 19, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability